

NTSB Order No. EA-5020

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 14th day of February, 2003

Docket Nos. SE-16754
SE-16755
SE-16756

The Administrator has appealed from the oral initial decision Administrative Law Judge William E. Fowler, Jr., rendered in this emergency proceeding on January 24, 2003, at the conclusion of an evidentiary hearing.¹ By that decision, the law judge reversed three orders of the Administrator that revoked

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each of the airline transport pilot (ATP) certificates held by the respondents for their alleged violations of sections 61.59(a)(1) and (2) of the Federal Aviation Regulations (FAR), 14 C.F.R. Part 61,² violations the Administrator also alleged demonstrated that the respondents lacked good moral character and were therefore ineligible to hold ATP certificates under FAR section 61.153(c).³ For the reasons discussed below, the Administrator's appeal will be denied.

The complaints against the three respondents were predicated on the belief that the respondents, through improper endorsements and false entries on airman certificate/rating forms, conspired to obtain, without meeting appropriate prerequisite requirements, a reinstatement of respondent Alava's flight instructor's certificate and an original issue flight instructor certificate, with single-engine, multi-engine, and instrument ratings, for respondent Porterfield.⁴ Respondent Khoyan enabled the scheme to advance, it was suspected, by virtue of his employment as an FAA operations inspector who could forward the falsified applications through the certification process. The Administrator's investigation of the bona fides of the reinstatement of respondent Alava's flight instructor certificate and the issuance of a flight instructor's certificate to respondent Porterfield

²Respondent Alava was also alleged to have violated FAR section 61.3(d)(2)(ii) and (iii).

³The respondents have filed replies opposing the appeal.

⁴Copies of the revocation orders, which served as the complaints, are attached to this opinion and order.

was triggered by questions the FAA's Airman Certification Branch raised with the Flight Standards District Office (FSDO) where respondent Khoyan had worked, as to the correctness of the paperwork applicable to respondent Porterfield's application.

In looking into those questions, the FSDO inspector assigned the task came to the view that the certificate applications the three respondents completed indicated time spent on ground and flight instruction that did not square with all of the evidence concerning either their activities on the day they claimed they had been tested or the flight time logged on the aircraft they claimed to have utilized for the flight test. Specifically, the two applications, among other suspected deficiencies, each claimed about an hour more flight time than their own evidence established the flight on August 10, 2001 lasted. That is, while respondent Alava claimed his flight test took 2.5 hours and respondent Porterfield claimed 3.0 hours, the aircraft, the respondents appear to concede, could not have been airborne for more than a total time of about an hour and twenty to thirty minutes.⁵

At the hearing, the respondents did not deny either the materiality or the falsity of the flight time entries in the

⁵Respondent Khoyan asserted that he began ground instruction of the other two respondents about an hour or so before the aircraft, a Cessna 414, took off, then checked out respondent Alava for the reinstatement of his flight instructor certificate. Respondent Alava, in turn, then conducted respondent Porterfield's checkride for a flight instructor certificate with single-engine, multi-engine, and instrument ratings. The parties' experts differed as to whether sufficient time had been available for completion of all of the necessary testing.

certificate applications. Rather, they asserted they must simply have been mistaken in their recollections of the time consumed by the flight portion of their testing. The law judge, based on his view of the various witnesses' credibility, concluded that the respondents had not intended to falsify the applications.

Nothing in the Administrator's brief persuades us that the law judge's decision should be disturbed.⁶

ACCORDINGLY, IT IS ORDERED THAT:

The Administrator's appeal is denied.

HAMMERSCHMIDT, Acting Chairman, and GOGLIA and CARMODY, Members of the Board, concurred in the above opinion and order.

⁶Our decision not to overturn the law judge's credibility assessment should not be read to suggest that we endorse his comment that the case "should never have been brought" (Tr. at 1009).